IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition (S/S) No. 1182 of 2003

Umrao Singh

...Petitioner

Vs.

Secretary Irrigation Department & Others

...Respondents

Mr. K.S. Bora, Advocate for the petitioner.

Mr. N.S. Pundir, Deputy Advocate General for the State of Uttarakhand/respondents.

JUDGMENT

Hon'ble Sharad Kumar Sharma, J (Oral)

It has always been a bone of contention and often an issue of judicial debate, which has been addressed and answered by various courts by various judicial proceedings laying down the wider principles, on the basis of which the petitioner of a case before a Court of law can claim for a grant of parity of scale vis-à-vis the higher scale, which has been granted in other departments.

2. This Court too in the present writ petition has been called upon to answer the said claim, which has been raised by the petitioner herein, he in his pleadings contends that he had been working as against the post of Air Compressor Driver/Operator, in the Irrigation Department and he claims a parity of scale for the same post, i.e. Air Compressor Driver/Operator, who are working in the Minor Irrigation Department and who by virtue of the Government Order dated 22.03.1994 had been paid a particular scale of ₹1200/--₹1800/-, which at the time of filing of the Writ Petition was a scale higher than what were being paid to the petitioner.

3. The briefly put the case in the Writ Petition was that the petitioner has factually contended that he was appointed with the Irrigation Department as against the aforesaid post as back as on 01.04.1976. Later, the said appointment of the petitioner in the work charge capacity was given a regular status by the department by issuing an order on 01.08.1986. The cause which has been agitated by

the petitioner in the petition is that when he was initially appointed in the Irrigation Department he was being paid the scale of ₹825/- - ₹1200/-, which later on stood revised to ₹2750/- - ₹3500/- w.e.f. 01.01.1996 after the enforcement of the recommendations of the 5th Pay Commission made applicable in the Irrigation Department, whereas, in the Minor Irrigation Department the scale which was revised and was made applicable was in pursuance of the Government Order dated 22.03.1994, whereby, the persons carrying the identical post having some responsibilities as that of the petitioner had been made payable the scale of ₹1200/- - ₹1800/-, which was much higher than what was being paid to the petitioner. He claims parity on that basis.

4. The grievance of the petitioner is that this disparity in the scale, which is the cause agitated in the present writ, wherein, the petitioner has agitated it for the first time by filing a writ petition before this Court on 30.09.2003 praying for the following reliefs:

> "(I) To issue a writ, order or direction in the nature of mandamus thereby commanding the opposite parties to pay the pay scale of Rs. 4000-6000 to the petitioners are being paid in the other Government Department including Minor Irrigation Department.
>
> (II) To issue a writ order or direction in the nature of mandamus thereby directing the opp. Parties to pay the petitioner arrears with effect from the date when persons working in the other departments were provided higher pay scale on the post of Air Compressor or Driver.
>
> (III) To issue a writ order or direction in the nature of mandamus thereby directing the opp. parties no. 1 and 2 to forthwith provide similar pay scale with is being provided to the persons working on the same post in other Government Department.
>
> (IV) To issue any other appropriate writ order or direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case.
>
> (V) Award the cost of the writ petition.
>
> (VI) To **issue a writ order of direction in the nature certiorari quashing the impugned order dated 20-04-2004 passed by the respondent no. 5/Executive Engineer, Haldwani, District Nainital,** otherwise the petitioner will suffer irreparable loss and injury."

5. At this juncture, it would be relevant to mention that by the time the petitioner had filed the writ petition praying for the relief as quoted above the scale which stood payable on account of the Revision in the Minor Irrigation Department stood re-fixed as ₹4000/- - ₹6000/- and, hence, it was that parity which was prayed for by the petitioner by way of relief no. 1 in the Writ Petition.

6. This Writ Petition came up for consideration before the Coordinate Bench at admission stage and the Court by an interim order dated 01.10.2003 while admitting the Writ Petition had passed an order directing that the respondent would consider the representation of the petitioner and the said representation would be decided by them within the time period as provided in the order dated 01.10.2003, i.e. one month.

7. In compliance thereto, the respondent no. 5-Executive Engineer, Haldwani, District Nainital, on considering the rival contentions had rejected the claim of parity of scale of the petitioner based on the Government Order dated 22.03.1994 by the order dated 20.04.2004. This order was brought on record by the Standing Counsel along with the counter affidavit, which was later on put to challenge by the petitioner by filing an amendment application and the said order is being sought to be quashed by the amended relief no. 6 of the Writ Petition.

8. On a simple logic that for the purposes of claiming a parity of scale it is based upon certain wider well settled principles, i.e.

(i) to claim an identical monetary benefit the two employees working in the department has had to have the **same qualification** required for the post at the induction level in the department.

(ii) Secondly, if parity is claimed pertaining to a service benefit then apart from the qualification

they have to have undergone the **same process of selection**.

(iii) To claim parity in scale they are required to discharge the **same nature of work** with the same respondent, parity vested with the office to make them at parlance with the class from whom the parity is claimed for.

(iv) They have to have **some service conditions** to make them eligible to claim parity of scale.

9. Admittedly, what has been reflected from the records and also reflected from the impugned order dated 20.04.2004, which has been sought to be challenged by way of an amendment, is that the Irrigation Department and the Minor Irrigation Department are two different government entities/departments of the State, they have got their separate set up, separate claims of appointment and selection and conditions of work, which is applicable to them under different service rules. Hence, the claim of the petitioner in the Writ Petition for claiming an equality of wages as from amongst unequals of the other departments. It is that the Court is going to consider the grant of claim, but for the said purposes party who approaches to the Court has to establish by a comparative scrutiny, supported by material on record, the aforesaid four vital factors lies upon the persons who seeks a writ jurisdiction to claim a parity based on the principles of Article 13, 14 & 39 (1) (d) of the Constitution of India.

10. On scrutiny of the writ petition, the petitioner had nowhere comparatively analyzed the common circumstances and factors prevailing in the two departments which could call for entitlement of scale payable in the Minor Irrigation Department.

11. In the case at hand, the respondents in their counter affidavit as well as the impugned order dated 20.04.2004, which is under challenge, have specifically made an assertion that the

Government Order, which is the basis of claim since being an order, which is administrative in nature, has been issued on 20.03.1994 specifically for governing the scale payable to the post of Air Compressor Driver/Operator in the Minor Irrigation Department. Its implications cannot be borrowed for making it applicable over the Irrigation Department. It is altogether a different wing of the State Agencies, more particularly, when the State has by its conscious decision had not made it application in Irrigation Department, by exclusion of its name from the Government Order.

12. Apart from it, the petitioner in the present Writ Petition had not brought any particulars making a comparative scrutiny about the above parameters so as to place himself to a common pedestal and paralance for the grant of equivalent monetary benefits as that of the Irrigation Department.

13. Considering the aforesaid facts, this Court is of the view that until and unless the petitioner succeeds to establish his claim by virtue of the pleading or the evidence on record so as to claim parity by placing him at the common pedestal, the relief claim for cannot be granted.

14. As such, the Court declines to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India for issuing a writ of mandamus. Thus, the Writ Petition fails and is, accordingly, dismissed.

15. There would be no order as to costs.

(Sharad Kumar Sharma, J.)

20.12.2018

Pooja